

# **EXHIBIT “D”**

IN THE U.S. DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PA

\* \* \* \* \*

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TINA LINDQUIST, \*  
Plaintiff \* Case No.  
vs. \* 04-249E  
HEIM L.P., \*  
Defendant \*

COPY

\* \* \* \* \*

DEPOSITION OF

GARY DIETZ

JULY 21, 2005

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1 Q. Pardon me?

2 A. Yes.

3 Q. Tina Lindquist has testified  
4 that she never read the operator's  
5 manual for this particular machine. If  
6 she didn't, that would be in violation  
7 of the second warning contained on this  
8 machine; wouldn't it?

9 A. In violation of that, yes, I  
10 guess that's the way you've read it.

11 Q. And then at the very bottom it  
12 says it is the employer's  
13 responsibility to implement the above  
14 and also to provide proper dies,  
15 devices or means that may be necessary  
16 or required for any particular use,  
17 operation, set-up or service. Do you  
18 have any trouble understanding that  
19 instruction?

20 A. No.

21 Q. Is that telling the employer  
22 that it's up to the employer to  
23 determine what type of use they're  
24 going to put to this particular machine  
25 and then choose the appropriate safety

1 device for that use?

2 A. Yes.

3 Q. Because you're aware that  
4 certain safety devices, such as the  
5 two-palm button switch, can't be used  
6 for certain applications or press  
7 brakes, particularly if you have to  
8 hold the product outside of the die  
9 area; is that right?

10 A. Correct.

11 Q. Have you ever used an operation  
12 on any of the presses at Corry that  
13 required the use of a tool, a holding  
14 tool of some sort?

15 A. One more time. Say that again.

16 Q. Has Corry ever performed any  
17 processes with their presses where the  
18 operator is required to use a tool to  
19 hold the product?

20 A. I'm not --- I don't know.

21 Q. Have you ever heard of such a  
22 process being used before in the use of  
23 a press, where the user --- the  
24 operator actually holds the product  
25 with a tool?

1 A. Yeah.

2 Q. And that's another application  
3 where the two-palm button switch isn't  
4 going to work because the user has to  
5 actually hold the tool; is that right?

6 A. Yes.

7 Q. Do you know what a light curtain  
8 is?

9 A. Yes.

10 Q. What is a light curtain?

11 A. It's a device that has --- we  
12 use them on some of our presses. It  
13 creates I don't know what kind of  
14 light, but there's a light that's  
15 almost --- that is emitted from one  
16 side, and I think it's reflected back  
17 --- it's reflective on one side, and if  
18 you put something in there to --- that  
19 goes in between the two devices, it  
20 will prevent the machine or whatever it  
21 is attached to it from operating.

22 Q. When you first started working  
23 at Corry in 1993, were there any light  
24 curtains on any of the presses?

25 A. I don't remember.

1 Q. Similar to two-palm button  
2 switches that are suitable in certain  
3 applications and can't be used in some  
4 other applications, do you understand  
5 that light curtains are appropriate for  
6 some applications and can't be used in  
7 other applications?

8 A. It's my understanding, yes,  
9 that's the case.

10 Q. Was a light curtain added to  
11 this particular machine for this  
12 particular press brake after this  
13 accident?

14 A. Yes.

15 Q. And who made the decision to add  
16 that light curtain?

17 A. I believe it was maintenance  
18 personnel.

19 Q. Do you know who that would be?

20 A. Gary Merkle.

21 Q. Where did Corry get the light  
22 curtain from that was added?

23 A. I don't know.

24 Q. Do you know if my client, Heim,  
25 was ever asked to provide a light

1 light curtain?

2 A. I don't know.

3 Q. Can you give us an estimate as  
4 to how long after the accident happened  
5 that Corry installed the light curtain  
6 on this press brake?

7 A. My best recollection would be  
8 within one week.

9 Q. And during that one week of  
10 waiting for the light curtain, I  
11 understand the press was operated with  
12 a two-palm button switch; is that  
13 right?

14 A. To the best of my recollection,  
15 yes, sir.

16 Q. Do you know how long the  
17 two-palm button switch had been able to  
18 be used for this press brake before  
19 Tina Lindquist was injured?

20 A. No, I don't.

21 Q. Do you know of anyone ever  
22 complaining before Tina Lindquist was  
23 injured that the two-palm button switch  
24 should be used for the operation she  
25 was performing?

1 A. Not that I'm aware of, no.

2 Q. Did anyone else ever get injured  
3 on this particular press brake?

4 A. Not that I'm aware of.

5 Q. Have there been any other  
6 injuries on any of the other press  
7 brakes or presses at Corry?

8 A. Not that I'm aware of.

9 Q. Do you know what caused this  
10 particular accident to occur?

11 A. Yes. She had her hands in the  
12 die area and inadvertently pushed the  
13 foot switch.

14 Q. How do you know that?

15 A. That's my understanding of what  
16 happened.

17 Q. Yes. And where did you learn  
18 that understanding? How did you hear  
19 that?

20 A. She was operating the machine  
21 with a foot switch. That's the only  
22 way I see that could have happened.

23 Q. Tina Lindquist has testified  
24 recently that she specifically  
25 remembers pulling her foot out of that

1 A. Yes, there were different  
2 operations performed on it.

3 Q. And you've mentioned a number of  
4 processes for this particular part.  
5 Could a number of those processes be  
6 performed utilizing the Heim press  
7 brake?

8 A. Yes.

9 Q. And was the Heim press brake  
10 used for other parts?

11 A. Yes.

12 Q. And multiple processes involved  
13 with forming other parts?

14 A. Yes.

15 Q. Can you give us an estimate as  
16 to how many different uses you're aware  
17 of that the Heim press brake has been  
18 put to by Corry?

19 A. I don't know what that number  
20 would be. I don't feel I could give  
21 you an accurate guess.

22 Q. Give me a minimum number that  
23 you're comfortable with.

24 A. Number of operations?

25 Q. Different operations. Different

1 uses, if you will.

2 A. Twenty (20).

3 Q. You're comfortable in thinking  
4 it would be at least 20 and who knows  
5 however many more?

6 A. Correct.

7 Q. And I take it some of those uses  
8 were --- well, strike that.

9 Were some of those uses suitable  
10 for certain safety devices and other  
11 uses suitable for other safety devices?

12 A. Not sure. I guess.

13 Q. Well, we talked about how some  
14 processes you can't use certain safety  
15 devices.

16 A. No.

17 Q. And I'm wondering if the  
18 different uses to which the Heim press  
19 brake were such that some of those  
20 processes required certain safety  
21 devices, others you couldn't use  
22 certain safety devices, such that the  
23 use of the safety device changed,  
24 depending upon the use of the press  
25 brake. Does that seem accurate?

1                   ATTORNEY HARTMAN:

2                   What do you mean does it  
3                   seem accurate? I'm sorry, I  
4                   don't know what the question is.

5                   ATTORNEY ROBINSON:

6                   No, that's okay. Go  
7                   ahead.

8                   ATTORNEY HARTMAN:

9                   I'm going to object to  
10                  the form of the question.

11                  ATTORNEY ROBINSON:

12                  That's how I took your  
13                  comment.

14                  A. Could you just restate that for  
15                  me?

16                  BY ATTORNEY ROBINSON:

17                  Q. Sure. Did the different uses to  
18                  which the Heim press brake was put, a  
19                  minimum of 20, we don't know how many,  
20                  did those different uses require  
21                  different safety devices? We know  
22                  there were two different modes of  
23                  operation that were at least in  
24                  existence at the time of the accident.

25                  A. To my knowledge, that was the

1 two. They would use the palm buttons  
2 or foot switch.

3 Q. And do you understand that both  
4 of those were in use and available for  
5 the press brake because certain uses  
6 required the use of a foot switch and  
7 certain uses required the use of the  
8 two-palm button switch?

9 A. Yes.

10 Q. Did Corry ever report to Heim  
11 what type of use they were putting to  
12 the press brake?

13 A. I don't know that.

14 Q. Has anyone ever suggested at any  
15 time that Corry has ever contacted Heim  
16 to tell them what they were going to  
17 use the press brake for?

18 A. I don't know.

19 Q. Has anyone ever suggested that  
20 Corry has ever contacted Heim and asked  
21 for Heim's advice as to which safety  
22 device would be appropriate for any  
23 particular uses to which Corry was  
24 putting the press brake?

25 A. I don't know.

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1 |    inside the die area?

ATTORNEY HARTMAN:

3                   What definition of sit  
4                   are we using, yours or his?

5 ATTORNEY ROBINSON:

6 His.

7 A. My definition of sit --- I can't  
8 recollect seeing anybody sit in a chair  
9 at that machine.

10 BY ATTORNEY ROBINSON:

11 Q. Do you have a memory of seeing  
12 other people leaning their rear ends  
13 against the chair in a similar fashion  
14 as you described Tina Lindquist doing  
15 while placing their hands inside the  
16 die area of this press brake?

17 A. I don't know. I can't give you  
18 a definite answer.

19 Q. Then if you go to the second  
20 page, where it says risk control  
21 action, do you see that?

22 A . Yes .

23 Q. It says a full functionality  
24 test of the press was conducted at 3:20  
25 p.m. and again at 4:00 p.m. when I, I

1 assume that means Graig Filer, arrived  
2 at the scene? Do you see that?

3 A. Yes.

4 Q. And then it says that all cycles  
5 off, auto jog, single switch and  
6 continuous and operator buttons, two-  
7 hand palm and foot pedal were tested  
8 and found to be in good working order.

9 Do you see that?

10 A. Yes.

11 Q. Has anyone ever suggested to you  
12 that the press brake did not work as it  
13 was intended to work?

14 A. No.

15 Q. Everything that you've ever  
16 heard about the investigation reveals  
17 that the press brake worked as it was  
18 intended to work; is that correct?

19 A. Yes.

20 Q. Has anyone ever identified to  
21 you or suggested to you that there's  
22 some type of defect in the press brake?

23 A. No.

24 Q. Do you believe the press brake  
25 is defective in any way?

1 A. No.

2 Q. It then goes on to say, we noted  
3 that the foot pedal should not have  
4 been used in this situation with the  
5 employee working at the point of  
6 operation. The press should have been  
7 set up for the two-hand palm buttons  
8 and locked in this mode so that the  
9 foot pedal was inoperable. Do you have  
10 any opinion on those statements?

11 A. No.

12 Q. I think you said previously that  
13 this operation could have been  
14 performed safely with the foot switch  
15 if it had been placed at the proper  
16 location; is that right?

17 A. Yes.

18 Q. And that the two-palm button  
19 switch also could have been used safely  
20 and would have avoided this accident;  
21 is that right?

22 A. Yes.

23 Q. In fact, if you look at the  
24 second paragraph, the second sentence  
25 says this accident would have been

1 prevented had the machine been set up  
2 in this manner originally. You agree  
3 with that; right?

4 A. Yes.

5 Q. And then the second to last  
6 sentence in that same paragraph says,  
7 the company is also --- well, first of  
8 all, let me back up and just continue  
9 reading from there. It says, training  
10 will be conducted as soon as possible  
11 for supervisors and employees regarding  
12 the proper guarding and set-up of  
13 mechanical and other presses. Do you  
14 see that?

15 A. Uh-huh (yes).

16 Q. You have to answer verbally.

17 A. Yes.

18 Q. Did you receive additional  
19 training regarding the set-up and  
20 operation of presses after this  
21 accident?

22 A. I don't remember.

23 Q. And it says the company is also  
24 considering the installation of light  
25 curtains on this and one other